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Human Rights Committee
Eighty-ninth session

Summary record of the 2425th meeting
Held at Headquarters, New York, on Monday, 12 March 2007, at 3 p.m.

Chairperson: Mr. Rivas Posada

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Third periodic report of Madagascar

This record is subject to correction.

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Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

07-26647 (E)

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations

Third periodic report of Madagascar
(CCPR/C/MDG/2005/3; CCPR/C/MDG/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Madagascar took places at the Committee table.*

2. **Ms. Ratsiharovala** (Madagascar), expressing regret for the long delay in the submission of the report (CCPR/C/MDG/2005/3), assured the Committee that Madagascar considered itself bound by the Covenant and stood ready to improve its implementation of it. In 2003, her Government had established a technical committee for the drafting of human rights reports, comprising public officials and members of non-governmental organizations and of civil society, and that had made it possible to update the country's reporting to the various human rights treaty bodies.

3. The delegation's replies to the Committee's list of issues (CCPR/C/MDG/Q/3) would deal with legal, legislative, institutional, judicial and political developments, and steps taken or planned by the Government to implement the Covenant. She informed the Committee that since the drafting of the report in 2004, a new Judiciary Statute had reformed the judicial system and Decree No. 2006-015 on the general organization of prison services had reformed the prison system. Madagascar had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005 as well as the two Optional Protocols to the Convention on the Rights of the Child. The Government had widely publicized manuals on the observance of human rights, including recommendations on the application of the Covenant, issued for the general public in the Malagasy language. Lastly, the draft revision of the Constitution that would be put to a referendum on 4 April 2007 would strengthen the provisions regarding the effectiveness of the human rights treaties to which Madagascar was a party. The delegation looked forward to a constructive dialogue with the Committee.

4. **The Chairperson** invited the delegation to address questions 1 through 12 on the list of issues (CCPR/C/MDG/Q/3).

5. **Mr. Rakotoniaina** (Madagascar), referring to question 1 on the list of issues, observed that article 8 of the Constitution met the requirements of the Covenant in granting equal protection under the law to all individuals in Madagascar, including the equal right of aliens to apply for redress of human rights violations. Aliens were on par with nationals except for the enjoyment of certain political rights pertaining exclusively to citizens. In answer to question 2, there had been only one court decision, compensating a woman who had been a victim of gender and age discrimination in employment, after the 2003 Supreme Court Order. Citizens were not familiar enough with their human rights, nor were public officials, but the Government was actively working to raise awareness, and since 2006 had been providing human rights training to judicial and law enforcement officials, which would eventually broaden the jurisprudence guaranteeing the implementation of the Covenant.

6. The Government intended to reactivate the National Commission for Human Rights (question 3) once it had fully assessed the results of its first term and revised its statute so that it could become operational on a better basis, at which point new members would be nominated.

7. In answer to question 4, he said that in 2001 the Government had indeed decreed a state of emergency, as allowed by the Constitution. States of emergency could apply to the nation as a whole or to parts of the territory, and any abuse of power could be appealed in a court of common law or an administrative court. Time limits afforded legal protections: a state of emergency could be proclaimed only after the issuance of a formal decree and was limited to 15 days in the case of national emergencies, or to three renewable months in the case of martial law.

8. He observed that statistical information regarding the involvement of women in the public and private sectors (question 5) had been provided in the supplementary written responses just circulated to the members (CCPR/C/MDG/Q/3/Add.1 [French only], paras. 21-27). The number of women in key posts nationally and internationally had been rising, a trend that was expected to continue. Table 1 gave figures on the participation of women in the economy; and further information was given on the Government's policy to achieve gender equality and the action it had taken to combat traditional customs that were contrary to the Covenant.

9. Regarding access to contraception (question 6), he said that maternal mortality from clandestine abortions or infectious diseases had declined and that the Government's current policy to increase the availability of contraception by the year 2012 should guarantee a further decline.

10. The crimes punishable by death under the new Criminal Code (question 7) included armed robbery, premeditated murder, arson, poisoning and anti-government plots. The Parliament at its last session had deferred passage of legislation acceding to the Second Optional Protocol to the Covenant, but since Madagascar had already abolished the death penalty, accession would not pose any problem.

11. The response to question 8 required some clarification. *Dina* (report, paras. 108-114) were traditional village rules interpreted and implemented by law-enforcement village bodies through a kind of customary law system that had evolved in parallel to the regular courts of the country. In the past, such traditional judicial bodies had in fact decreed summary executions of bandits in their region; however, all such extrajudicial executions had ceased after the conviction, in 1997, of a member of one of those bodies of assassination. Act No. 2001-004 sought to incorporate the *Dina* into the Malagasy legal system by requiring court approval of all traditional rules, which must conform to the law. Any *Dina*-based decisions were thereafter automatically enforceable and did not require court approval, but they could be appealed in the regular courts of the country. *Dina* normally covered only minor infractions, subject to the penalties standard in the country, and they were also applied in settling minor village disputes. In the past, some of the traditional judicial bodies had ordered capital punishment for certain offences that were usually punishable by a maximum of five years in the regular courts of the country, but such village judgements were no longer permissible under the new Criminal Code.

12. Further to question 9 on the allegations of reciprocal incidents of torture by supporters of both parties in the 2001 elections, the Government had reviewed and dismissed or prosecuted all complaints, and some victims had received reparation. Most of the complaints had come from supporters of the candidate who was now President. The absence of complaints did not, of course, mean that torture did not occur, but specific complaints of torture were very helpful to the authorities as they acted to eliminate the practice.

13. In answer to question 10, he said that Decree No. 59-121 (report, para. 129) had been abrogated by the new Decree No. 2006-015 on the general organization of the Malagasy prison services, which had eliminated convict labour. Convicts now were paid at almost the normal rate for any work they did. As to the protection of domestic workers, they had the same rights and social benefits as all others. The Government's plan for the future was to improve living standards in general throughout the country, and that would include domestic workers.

14. Parliament was poised to adopt the reform proposal to reduce the length of pretrial detention (question 11). The statutory maximum pretrial detention was set at 20 months: an initial period of 8 months followed by 2 six-month extensions. In preliminary judicial investigations a maximum of three months' detention was permitted. The new legislation would completely eliminate the issuance of orders for immediate arrest for the commission of a crime, with unlimited detention (written responses, para. 57).

15. As indicated in the written responses (paras. 69-71), the Government had already disposed of all cases of prisoners who had spent more than five years on remand, and was now working on the cases of those detained for over three years. It had set up expanded legal teams, meeting several times a year, to deal with detainees who had been held for long periods, with a special task force handling the 400 criminal cases awaiting trial. No inmate had been waiting since 1972 in Nosy Lava prison for his appeal to be heard, but there was one case of a prisoner waiting since 1978. The Government was remedying the error that had created that situation, made by volunteers unfamiliar with legal procedures, and no more such cases would occur in the future.

16. Responding to question 12, he said that arrests or detentions could be termed arbitrary only when they were not based on any penal law or due process or when the detainees were not given a reason for their arrest or detention. The arrests made during the period of the 2001 elections had all been fact-based: destruction, embezzlement, kidnapping, assault and battery, murder and crimes against the internal security of the State, some of which had been politically motivated. In fact, there had hardly been any problems between the rival factions before or during election, with only one incident reported in a private hotel after the results were announced. It was only after the

Constitutional Court ruling that all the voting records should be double-checked, and after the international community officially recognized the new regime, that problems had started occurring.

17. **The Chairperson** invited the Committee to pose questions to the delegation.

18. **Mr. Amor** asked whether the delegation could provide the draft text of the proposed new constitution that was to be put to a referendum on 4 April. While it was true that customary structures helped promote social cohesion, they were difficult to reconcile with the modern needs of the country, with its positive law and Constitution and its international commitments, including its human rights obligations. Although the delegation had explained that the *Dina* dealt mainly with less serious offences, it was not clear whether the decisions relating to them were based on customs or the laws and regulations in force. The social norms of the *Dina* sometimes collided with the State party's obligations under the Covenant, as in the case of the systematic elimination of twins in some villages of the south-east or the practice of polygamy. It was incumbent on the State to take measures to ensure compliance with the Covenant, regardless of the particular circumstances of customary practice.

19. He asked whether the International Bill of Human Rights, the African Charter on Human Rights and People's Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, had been incorporated into Madagascar's positive constitutional law after ratification. In particular, he wished to know whether the Government intended to integrate the provisions of the Covenant into its domestic laws.

20. He asked whether the primacy of international treaties over domestic laws, subject to reciprocity with the other party applied to organic laws as well. He wondered whether the Covenant had infra-organic and supra-ordinary value and whether the principle of reciprocity could apply to multilateral treaties, including those on human rights. He also enquired about procedures or mechanisms to ensure compliance with the provisions of the Covenant. How did the principle of reciprocity — which applied to the political and economic rights of foreigners in the case of bilateral treaties — he requested information on apply to the personal rights of foreigners as well? Was there any relevant jurisprudence of the Constitutional Court or other courts in that connection?

21. **Mr. O'Flaherty** asked how the Supreme Court had relied on the Covenant in the case of *Dugain v. Air Madagascar*, where it was cited. He also wished to know whether the delegation had any further information concerning the proposed joint programme with the United Nations Development Programme (UNDP) to raise professional and public awareness of the Covenant, especially among judges and the traditional judicial bodies that enforced the *Dina*. With regard to training, he requested information on the role of human rights education in schools and universities, and in the training of lawyers and judges. He asked whether the UNDP programme was sustainable and whether it addressed institutional needs for long-term human rights education.

22. Concerning question 3 on the National Commission for Human Rights, he noted that the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination had also expressed concerns about the Commission's demise and asked whether the delegation had a timetable for completion of the first phase of the Government's review and for the reinstatement of the Commission. He also wanted to know whether the Government was taking steps to bring the Commission into line with the highest international standards for human rights commissions and whether it was consulting with the Office of the High Commissioner for Human Rights to that end.

23. With regard to question 4 on the state of emergency, he sought further information about judicial oversight or any independent safeguards put in place to monitor Government action. Referring to reports from Malagasy NGOs about human trafficking in the country, he asked whether the Government had programmes in place to address the issue and whether it was cooperating with neighbouring countries to curb the problem. Finally, he asked whether the delegation could provide statistics about the prosecution of traffickers and actions taken to support victims.

24. **Mr. Glélé-Ahanhanzo**, while acknowledging the tremendous social pressures impeding gender equality, asked what the Government was doing to educate the public on such issues, particularly on the practice of the systematic rejection of twins. He would appreciate concrete examples of efforts to raise awareness in

regions where resistance to gender equality was prevalent and to educate the public on the provisions of the Covenant.

25. **Mr. Khälil**, referring to the issue of respect for the right to life, said he was pleased to see that the Government agreed with a study on the situation of women and children in Madagascar (CCPR/C/MDG/2005/3, para. 83), which indicated that there were still problems related to ignorance of or unfamiliarity with modern contraceptive methods. Regrettably, not much was being done to alleviate the situation of unwanted children and illegal abortions or to improve family planning. Although the delegation said that greater efforts were being made, he wanted to know what measures had been taken to curb the reprehensible practice of the systematic rejection of twins and to raise the awareness of traditional leaders about the issue. Finally, he asked whether the courts satisfied themselves that the *Dina* respected the minimum guarantees under article 14 of the Covenant and whether the State party was going to include a clear definition of torture in its draft law on the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. **Ms. Palm** drew attention to paragraphs 120 to 123 of the report on the prohibition of slavery, which noted the persistence of one form of slavery — the failure to pay a proper wage to certain workers — and which stated that the principal new forms of modern slavery were connected with low-paid or unpaid work, generally involving domestic workers and detainees. Noting with satisfaction the reorganization of the Malagasy penal administration (written responses, para. 48), she said that detainees nevertheless continued to be permitted to work outside prisons for private enterprises without proper wages. More information was needed on the kind of work performed by the detainees, whether it was compulsory, how the wages compared with normal wages for the same work and who received the wages, if any. She also noted with concern reports of children still employed as domestic workers in rural and urban areas. They worked without pay and under very harsh conditions, despite legislation prohibiting such child labour. She would like to know what the State was doing to enforce the relevant legislation and to protect children from that form of modern slavery.

27. **Mr. Lallah** said that too much time had elapsed since the submission of the previous report. He hoped that such a lengthy gap would not recur, as it did not allow for the Malagasy Government to benefit from the Committee's input. In the current report, for example, little reference was made to the previous recommendations of the Committee.

28. With respect to question 12, he was concerned at the treatment of the persons responsible for some of the events of 2001. It was important that there should be no perception of impunity among the general public in order to protect the rights guaranteed under article 25 of the Covenant. In Madagascar, the judiciary had not been perceived to be entirely independent from the Government. The purpose of question 12 was to ensure that all people were treated equally. He would like to know whether those responsible for the disorder in 2001 had been dealt with impartially regardless of their political position. It would be useful to know how many government supporters had been punished as compared to members of the opposition. Impunity and discrimination in the treatment of people were two of the greatest enemies of a democratic order.

29. As for article 4 of the Covenant, although the legal machinery was described at length in paragraphs 44 to 68 of the report, there was no mention of the actual state of emergency declared in 2001. Furthermore, the information provided in the supplementary written responses was lacking in detail. The Malagasy Constitution did not incorporate the provisions of article 4, and it was unclear whether the proposed amendments to the Constitution would have any bearing on it. Article 4 was essential, as the foregoing articles involved basic rights from which the executive branch could not derogate at any time.

30. He would also like to know whether the Malagasy Government had notified the Secretary-General and other States parties to the Covenant about the state of emergency. It was essential that such notification should be given. When derogations were made, as was the case in 2001, the Committee should know which rights had been affected, the extent of the derogation and the measures taken under the derogation.

31. Regarding the *Dina*, it should not be assumed that the Committee was aware of how they functioned. Clarification was needed on the procedures under that extralegal regime. The supplementary written responses themselves acknowledged that the *Dina* involved extrajudicial machinery. Clarification was

needed on the remedies available in the event that that machinery interfered with any right protected under the Covenant. He would appreciate further explanation of how draft *Dina*-based decisions were distinguished from actual binding decisions. He would like to know whether the authorities who approved draft *Dina*-based decisions took into consideration any of the rights protected under the Covenant. More details were needed on whether such decisions were subject to appeal, in accordance with article 14 of the Covenant, on the rights of the defendant, plaintiff and prosecuting authorities concerned and on the limitations of those rights and on whether the presumption of innocence applied.

32. Lastly, he would like to know, in the light of the perception that the judiciary was not independent, whether there was a code of conduct relating to the judiciary. Such a code was the only guarantee available to citizens faced with the power of the State or the power of the powerful.

33. **Ms. Chanet** said that she, too, regretted the lengthy gap between the submissions of the periodic reports. She noted that the existence of capital punishment for cattle theft was disproportionate and contrary to article 6 of the Covenant. Concerning question 12, she also expressed concern at reports of inconsistencies in the penalties applied in connection with the events of 2001, depending on the political stance of the accused. Although the proposed commission of inquiry, which might have helped to prevent such double standards, had not come into being, she would welcome hearing the delegation's views on it. Concerning the *Dina*, clarification was needed on how they operated and particularly how remedies could be pursued when a person was convicted under a *Dina*-based decision. There had been reports that, despite the new legislation mentioned in the report to regulate *Dina*-based decisions, extrajudicial executions continued to be carried out in the country, often by security forces.

34. With respect to torture, the report mentioned legislation aimed at enforcing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She would like to know whether that legislation provided for the suppression of torture as such or as an aggravating circumstance of certain crimes, as was currently the case under article 303 of the Penal Code.

35. Concerning the length of detention, she was perplexed by the Malagasy delegation's reply concerning the security of the person and the right not to be subjected to arbitrary detention. Paragraph 57 of the supplementary written responses stated that there was no limit on the length of detention after the issuance of an arrest warrant, which contradicted article 9 of the Covenant. Clarification was needed on the status of the draft legislation concerning time limits on police custody.

36. **Mr. Glélé-Ahanhanzo** enquired about the maximum length of pre-trial detention and the number of persons freed on bail in recent years. Further details were needed on the detainees who had spent more than five years on remand (CCPR/C/MDG/2005/3, paras. 205 and 206). Lastly, with respect to question 11, even if there was no inmate of Nosy Lava prison who had been waiting since 1972 for his appeal to be heard (written responses), there was one person who had been waiting since 1979, which was an excessively lengthy period. He therefore made an urgent appeal for the Malagasy Government to resolve the issue.

37. **Ms. Motoc**, noting with satisfaction the significant number of women in the delegation, asked what measures had been taken by Madagascar to educate rural populations about the Covenant. Information was needed on whether steps had been taken to inform traditional leaders about the provisions of the international instruments to which Madagascar was currently a party. She would also like to know what measures had been taken to punish breaches of Malagasy law, including against traditional leaders responsible for extrajudicial executions. Noting the Malagasy initiatives to combat corruption, she said that such efforts were necessary not only for the creation of an environment conducive to economic development, as was stated in the report, but also for the full protection of human rights. More details were needed on action taken by the anti-corruption bodies mentioned in the report. She would also appreciate further information on the specific steps taken to combat the upsurge of kidnappings in recent years and the networks mentioned in the report involving the kidnapping of mostly Indian and Pakistani nationals. She would welcome an update on the bill to abolish the death penalty. Lastly, she would like to know whether the Constitution recognized the existence of minorities.

38. **Mr. Iwasawa**, acknowledging the frank admission by the Malagasy delegation that there were

obstacles to the implementation of the Covenant, including the customs in rural areas, asked whether such customs affected human rights other than the right to equality between men and women and the right to life. He would welcome further information on the effectiveness of the measures taken to address customs which ran counter to the Covenant, as outlined in paragraph 28 of the supplementary written responses.

39. **Mr. Johnson** said that while the trade union rights were guaranteed in all areas under Malagasy law, in practice workers in the export processing zone found it difficult to organize unions or undertake collective negotiations. Only one company of the existing 62 in the zone had signed a collective bargaining agreement. There were also reports of abuses involving mandatory overtime, night work for women and sexual harassment. He would therefore appreciate further clarification on those matters.

40. *The meeting was suspended at 5.10 p.m. and resumed at 5.35 p.m.*

41. **Mr. Rakotoniaina** (Madagascar) explained that the Government of Madagascar, in cooperation with UNDP, had been undertaking awareness-raising programmes to try to eliminate the customs and usages that were in conflict with the Covenant and domestic law. As that was a long-term undertaking, it had been decided that the programme for the current year would consist of a dialogue at the commune or village level dealing in particular with the taboo on raising twins.

42. The programme would involve the customary leaders, local and State authorities, teachers and religious leaders, as well as the victims, namely the parents of twins. However, an added level of complication was that discussing the taboos was itself taboo. The intention was to overcome the taboo on twins in order to achieve a behavioural change at the grass-roots level, but there was no doubt that it was going to be difficult. Subsequently, the programme would be extended to other locations, and cover other issues. Designated contact persons in the various villages would attempt to convince their fellow-villagers of the need to abandon taboos and other negative customs. Finally, there would be an evaluation of the impact of the programme as a whole.

43. Turning to the question on reconciling the existence of a modern State with the simultaneous existence of customary jurisdictions which handed down extrajudicial decisions, he said that while the phenomenon had existed since time immemorial, the State was trying to eliminate it, in particular by prosecuting customary leaders who pronounced extrajudicial sentences. One particular customary leader had been sentenced in 1997, and since his prosecution, there had been no more extrajudicial sentences in his region.

44. The law providing for codification of the *Dina*, he explained, was intended to suppress the existence of traditional judicial bodies, which, in the past, had handed down decisions that were not in conformity with the law and disproportionate to the crime (and against which there was no appeal). The law authorized the drawing up of *Dina*, or rules that were applicable at village level but that must not interfere with positive law. In other words, there might be rules on minor village issues, but in future people would no longer be judged by traditional judicial bodies that were not recognized by the law. With regard to the status of decisions made under the *Dina* system, he explained that if one of the parties to the dispute was not satisfied with the outcome, the matter could be submitted to the court of appeal. Already, positive results were being seen: the press no longer carried reports of summary executions ordered by the customary courts.

45. Turning to the question of summary executions by law enforcement officers in the rural area, he clarified that police officers had fired their weapons only when their lives were being threatened by armed bandits. Thus the issue was whether or not legitimate self-defence was involved, in other words whether a policeman's life was truly in danger when he fired his weapon. The fact that a bandit was carrying a weapon was in and of itself a justification for armed response. Indeed, the Government had a long list of policemen who had hesitated to fire and been killed by bandits. These stories tended not to be covered in the press: only the opposite situation, of the bandits killed by the police, was reported. But police officers were human beings too and were equally entitled to the right to life. That did not mean that there were never errors of judgement; however, if a policeman fired his weapon when not in a situation of justified self-defence, he could be prosecuted and sentenced.

46. Turning to the question on selective justice during the election period, and assertions that sentences had been systematically passed with a view to inflicting harm on the supporters of one side, he said that it was necessary to understand the context at the

time. During those demonstrations huge crowds had set up barricades to prevent the delivery of food supplies to the capital, and soldiers had been sent to dismantle them. Bridges had been dynamited, fires had been set, and other violent offences had taken place. All those offences, however, had been committed only by one side, which had not complained of being attacked by the other side. Had there been such complaints, failure to act on them would have constituted selective justice, but that had not been the case.

47. **Mr. Andriamihanta** (Madagascar) said that since there had been many questions with regard to the concept of *Dina*, he would try to be as clear as possible to avoid misunderstanding. The concept of *Dina* was part of the culture and traditions of Madagascar, a way of regulating the life of society going back centuries. *Dina* should not really be described as a system of traditional judicial bodies; rather, it was a form of social organization, comprising collective rules that were freely adopted by a majority at the grass-roots level and were specific to each locality.

48. They were now codified in a form known as the "Standard Pattern *Dina*", as provided for by Act No. 2001-004. Under that law, *Dina* could not be contrary to the Constitution, and therefore by extension could not be contrary to the Covenant or, indeed, to national law. In terms of procedure, under the *Dina* system, the right of both sides to be heard was respected. The traditional judicial bodies that enforced the *Dina* should thus not be viewed as archaic or as flouting human rights. While there might well have been abuses in the past, particularly in the south-east of the country, customary leaders exceeding their authority under the law now suffered appropriate penalties.

49. **Ms. Rasoamananjara** (Madagascar) wished to provide clarification concerning the taboo on twins. Indeed, in one part of the country, the taboo had been part of usages and customs based on ignorance, fear and a lack of education. However, it was not correct that one twin in every set was killed; rather, one of them was abandoned. That situation had changed, however; many of the region's better educated men and women now chose to escape if twins were born to them and those who could not move could bring their twins to centres where they were looked after by associations until they could be adopted by people of goodwill. Thanks to changes in the law, the adoption of twins by foreigners was no longer regarded as trafficking.

50. The national gender and development action plan (PANAGED) was a part of the Madagascar Action Plan (MAP). The Economic Policy Framework Document (DCPE) for Madagascar, had been drawn up in 1995, and later superseded by the country's Poverty Reduction Strategy Paper (PRSP). That, in turn, had now been replaced by the Madagascar Action Plan.

51. **Ms. Mohajy** (Madagascar) referred to the question on whether international treaties took precedence over national law and whether the principle of reciprocity applied to multilateral treaties and international human rights instruments. Under the Malagasy Constitution, duly ratified treaties or agreements took precedence over national law. The issue of reciprocity arose only in the case of bilateral treaties.

52. The status of the charters listed in the preamble was an issue that gave rise to wide-ranging doctrinal debates, and Madagascar had adopted a pragmatic approach. By giving the charters a status higher than the law, the Constitution stipulated their incorporation into the positive laws of Madagascar. However, as there was no jurisprudence relating to those charters, a capacity-building seminar in that area would be useful.

The meeting rose at 6 p.m.

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Eighty-ninth session

Summary record of the 2426th meeting
Held at Headquarters, New York, on Tuesday, 13 March 2007, at 10 a.m.

Chairperson: Mr. Rivas Posada

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07-26773 (E)

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Third periodic report of Madagascar (*continued*) (CCPR/C/MDG/2005/3; CCPR/C/MDG/Q/3)

1. *At the invitation of the Chairperson, the members of the delegation of Madagascar resumed places at the Committee table.*

2. **The Chairperson** invited the delegation of Madagascar to continue its replies to points raised in connection with questions 1-12 on the list of issues (CCPR/C/MDG/Q/3).

3. **Ms. Ratsiharovala** (Madagascar) said that the issue of unionization of workers in the free trade zones was being reviewed by the National Labour Board, which included representatives of workers, employers and the State. Measures had been adopted to reinforce inspection of workplaces, register workers and encourage the signing of collective agreements, including in the free trade zones. Works' councils had been established to deal with issues relating to working conditions, and workers in the free trade zones had the right to choose any union, not only the official union, to represent them.

4. She said polygamy was very rare, and limited to barely 1.6 per cent of the population, a rate that was declining. Steps taken to eliminate polygamy included educating women about their rights and increasing awareness of the need to eliminate that practice within the communities where it was most common.

5. Human rights training was provided by the Ministry of Justice to the military, the police, prison staff and the judiciary through institutions such as the military academy and the National School of the Judiciary and Court Officers. Manuals relating to international human rights standards were available in the national language. Efforts were under way to re-establish the National Commission for Human Rights; a meeting with a representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been held in 2006 for that purpose. There was no specific mechanism to monitor human rights during emergency situations, although victims of any alleged violation could file a complaint with the administrative court.

6. She acknowledged that trafficking in children had been a problem but stressed that Madagascar was a party to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. A seminar on that question had been organized in 2006 in cooperation with the United Nations Office on Drugs and Crime (UNODC), and the issue would be addressed in the reform of the Criminal Code. There was a new law regulating adoption and, with a view to putting an end to abuses, international adoption had been suspended, the institutions involved had had their licences revoked and further legislation was envisaged. In order to eliminate the enslavement of children, a national plan to abolish child labour had been adopted and 12 June of every year would be celebrated as the World Day against Child Labour. A national committee had been established, made up of representatives of ministries, civil society and NGOs, to monitor the situation and promote employment and revenue-generating activities for parents, including micro-credit schemes, so they would not have to sell their children into slavery.

7. With regard to the use of prisoners to perform work outside prison, she said such labour was voluntary and remunerated and restricted to contracts between the prison administration and the employer for work of a public service nature. Work to benefit individuals was prohibited.

8. The rate of use of contraceptives had increased from 5 per cent of the population in 1992 to 18 per cent in 2003-2004. In the Madagascar Action Plan (MAP) 2007-2012, the target rate for 2012 was set at 30 per cent. Under a pilot project conducted in 2005, the Ministry of Health had distributed contraceptives in seven districts, resulting in a fivefold increase in their use over three months; as a result, that programme would be extended throughout the country.

9. Pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a draft text was being prepared which would criminalize torture. A draft law on pretrial detention had been approved by the Council of Ministers and would be submitted to Parliament for adoption at its next session. Under that draft, individuals could no longer be held in pretrial detention indefinitely. As for allegations of corruption, she said some State agents, including senior civil servants and project leaders, had been prosecuted and

found guilty of corruption. With regard to the issue of kidnapping, she observed that members of the Indo-Pakistani community were the victims of abductions.

10. A code of conduct for judges, based on the Bangalore Principles of Judicial Conduct, had been drafted in 2005, and the Ministry of Justice and the National School of the Judiciary and Court Officers had organized seminars on the question of ethical conduct in 2006 which had been attended by all judges, as well as by the Minister of Justice himself. Furthermore, it would henceforth be the responsibility of the Supreme Council of the Judiciary, not the Executive, to take decisions regarding the careers of judges and to supervise the profession.

11. **Ms. Chanet** reiterated her concern about allegations of summary executions by the authorities. She also continued to be alarmed at the situation of twin children, who, although no longer killed, were nevertheless often abandoned, violating their right to a normal life. She wondered what the State party was doing to remedy those situations.

12. **Mr. Lallah** requested more information on the functioning of the *Dina* courts, their membership and any safeguards that existed to ensure they acted fairly and impartially. He cautioned against the danger of a State allowing custom and tradition to circumvent the provisions of the Covenant while simply introducing palliative measures to correct the worst abuses of such systems. Whenever traditional practices were in conflict with the Covenant it was the Covenant that must prevail; in that regard, he referred the State party to the Committee's general comments and jurisprudence.

13. **Mr. Amor** welcomed the strengthened human rights guarantees contained in the new draft Constitution. With regard to the right to protection of health from the time of conception, however, he wondered whether abortion rights would be protected. He expressed concern that the requirement to respect cultural values pursuant to article 39 could lead to the persistence of abuses such as the ill-treatment of twins. He also assumed, with reference to the draft Constitution, that there would be no problem relating to the implementation of multilateral treaties, especially those linked to the Covenant.

14. **Mr. O'Flaherty** asked if resources to continue human rights awareness programmes and embed them in State institutions over the long term would be available once partnerships with United Nations mechanisms came to an end. He stressed the urgency of creating a time frame for the re-establishment of the National Commission for Human Rights and a mechanism other than the administrative court to ensure there were adequate safeguards for the protection of human rights during emergency situations, and requested information on steps taken by the State party to implement article 4 of the Covenant. In that same vein, although he welcomed the organization of workshops relating to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, he underscored the need to strike a balance between the suppression and punishment of such practices and the protection of human rights.

15. **Ms. Wedgwood** enquired whether appeals against *Dina* decisions could be based on both the facts and the law, who or what body would hear such appeals, whether any form of legal aid was available for the purpose and what punishment had been handed out to village chiefs who, whether through the *Dina* or previous village mechanisms, had ordered summary executions.

16. **The Chairperson** invited the delegation of Madagascar to address questions 13-24 on the list of issues.

17. **Mr. Rakotoniaina** (Madagascar), referring to question 13, said that in order to reduce the number of persons in pretrial detention, the number of criminal court sessions had been increased from 2 to 20, with 595 criminal cases having been reviewed in 2006 in one court alone. To reduce overcrowding, four new prisons had been opened and two had been enlarged; furthermore, alternative sentences to incarceration were being implemented. The number of inmate deaths had fallen from 328 in 2005 to 83 in 2006. Efforts were under way to separate remand and convicted prisoners, women and children. Finally, 900 million Malagasy ariary (MGA) had been allocated to improve the quality of meals in the prisons.

18. With regard to imprisonment for civil debts (question 14), he said the police and prosecutors had been made aware of the importance of distinguishing between civil and criminal offences. An individual could in fact no longer be imprisoned for a civil debt.

19. Turning to questions 15-17, he said his Government was aware of the need to address the

understaffing of the judicial system and in 2006 had doubled from 25 to 50 and from 50 to 100 the number of student judges and court officers respectively admitted to the National School of the Judiciary and Court Officers. A specialized institute for the training of lawyers had also been established and the right to representation by a lawyer had been affirmed. Legal aid was available and was free of charge for cases involving labour issues as well as for cases carrying a penalty of more than 5 years' imprisonment.

20. The independence of the judiciary was guaranteed by Ordinance No. 2005-005 on the organization of the judiciary, and judges were free to interpret the law in reaching their decisions. Any judicial misconduct would be reviewed by the Supreme Council of the Judiciary, which could punish an offending judge, inter alia by removing him from the bench.

21. Regarding question 18, he said freedom of religion was guaranteed pursuant to article 10 of the Constitution. Concerning questions 19-21, he said one television and 7 radio stations had been closed by the Government for technical violations since 2002, and, in 2002, two radio stations had been attacked in the post-election period. There had been no arrests for expressing political opinions. Political meetings had to be authorized, but only for security reasons: they had to be held in an enclosed location and there had to be guarantees for the safety of participants and third parties. That could not be considered an act of discrimination against political parties, all of which had to meet the same criteria. All types of organizations, be they non-profit, cultural or political or private sector, or civil service unions, were allowed and regulated by the law.

22. In response to question 22, he said that all registered voters and electoral candidates were entitled to appeal to the Constitutional High Court in disputes involving elections. With regard to question 23, there were no ethnic minorities as such in Madagascar, although there were a number of minority linguistic groups. The latter were free to use their native languages and abide by their own customs provided that they did not conflict with domestic legislation. Lastly, referring to question 24, he said that handbooks containing information about the Covenant and the Optional Protocol had been published and distributed to the general population as well as to members of the judiciary. Those handbooks contained detailed illustrations, thereby ensuring that they would be understood by the illiterate. In addition, the Government had introduced a series of training courses, based on case studies, designed to prevent future human rights violations.

23. **Mr. Amor** welcomed the proposals designed to improve prison conditions. However, he was concerned that article 408, paragraph 2, of the Criminal Code, pursuant to which imprisonment for civil debt was permissible in the event of a bad faith refusal to carry out contractual obligations, was incompatible with article 11 of the Covenant. In that connection, and for the purposes of clarification, he requested a copy of that provision.

24. Referring to article 18 of the Covenant, he commended the State party for its religious diversity but expressed concern about possible restrictions on religious freedom. In particular, he wished to know whether certain churches had been used for political ends during the 2001 and 2002 elections and whether it was true that one of those churches had subsequently been dissolved. He also enquired about the prevalence of religious sects in Madagascar.

25. As far as political rights (article 25 of the Covenant) were concerned, the National Electoral Council was empowered to refer complaints concerning elections to the courts. If the Council failed to refer a particular complaint, was it possible to appeal against its decision?

26. Lastly, according to the relevant core document (HRI/CORE/1/Add.31/Rev.1), there were 18 main ethnic groups in Madagascar. He wondered whether friction existed between national interests and the interests of ethnic minorities and whether specific provision had been made to protect the rights of the latter.

27. **Mr. Glèlè-Ahanhanzo** pointed out that imprisonment for civil debt was a widespread phenomenon in black Africa. While he welcomed the steps taken to incorporate the prohibition of imprisonment for civil debt into domestic legislation, he would be grateful for more detailed information, including statistics where available, on the de facto effects of that legislation.

28. **Ms. Palm** welcomed the steps taken to deal with child labour, but enquired whether any specific measures had been adopted to punish employers.

29. Referring to article 14 of the Covenant (right to a fair trial), she urged the State party to address the concerns expressed about *Dina* decisions. The efforts undertaken to strengthen the judicial system were commendable, but enacting new legislation was only the first step in a much longer process. Information about legal aid arrangements was not widely available, and she wished to know whether suspects eligible for legal aid had access to competent lawyers at all stages of the proceedings. She was also concerned about the apparent loss of case files and the resulting extension of suspects' detention periods. Although that situation could be attributable in part to the shortage of judges, she wondered whether the State party had an adequate system for registering files.

30. Lastly, she asked for information on existing measures to safeguard the independence of the judiciary. In particular, she wished to know how judges were appointed, how much they earned and whether they could be removed from office. She enquired as to the arrangements for taking disciplinary action against judges and about the role and responsibilities of the Supreme Council of the Judiciary.

31. **Mr. Lallah**, referring to paragraphs 6-9 of the core document, expressed concern at the apparent distinction between ethnic groups sharing the same language (Malagasy) and members of foreign communities. He wished to know whether the latter were citizens of Madagascar. If so, could the fact that they were still regarded as foreigners undermine their status as Malagasy nationals?

32. He commended the State party for its efforts to provide training courses on the Covenant and the Optional Protocol for State employees, but, given the important role played by customary courts in rural areas, expressed surprise at the apparent lack of courses geared towards the members of those courts. The Government should seek a practical solution to that problem.

33. **Mr. Bhagwati** requested additional information about the management and activities of the National School of the Judiciary and Court Officers. He wished to know whether the School was run by members of the judiciary and whether the courses it offered were compulsory for all judges. He also enquired whether judges could avail themselves of periodic refresher training.

34. The State party should indicate the composition of the Council of State and the categories of appeal it considered. He asked whether Madagascar had a final court of appeal and, if so, what was the scope of its jurisdiction. Did domestic legislation provide explicitly for legal aid, or was such aid supplied at the discretion of the Bar? He requested clarification of the role of the African Development Bank in that regard.

35. A number of bodies had been established to ensure the enforcement of the law against corruption, adopted in 2004. He would be grateful for detailed information on the specific activities carried out by those bodies and on the number of individual cases brought before the courts.

36. **Ms. Majodina**, referring to article 13 of the Covenant on the expulsion of aliens, asked whether the Malagasy authorities had established procedures for the determination of refugee status and whether asylum-seekers awaiting such determination were placed in detention centres. She also enquired as to the measures in place to ensure that asylum-seekers who were not granted refugee status were repatriated in a dignified manner.

37. The independence of the now defunct National Commission for Human Rights had been compromised by the participation of members of the executive branch. The State party should therefore describe the steps taken to guarantee the independence of the proposed new Commission, in accordance with the Paris Principles. In closing, she pointed out that OHCHR offered technical assistance to countries wishing to establish independent human rights monitoring bodies.

38. **Mr. Glèlè-Ahanhanzo**, referring to paragraph 73 of the State party's written responses, said that it was inhumane to postpone an application for judicial review for 30 years while maintaining the prisoner concerned in detention. He urged the Government of Madagascar to settle Mr. Rakotonirina's case as soon as possible.

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

39. **Mr. Rakotoniaina** (Madagascar) said that article 408, paragraph 2, of the Criminal Code should be understood as applying to debtors who refused to pay back advances received or to fulfil contractual obligations. A study performed by United Nations

experts on the interpretation and application of the article had in fact concluded that, as stated in paragraph 227 of Madagascar's third periodic report, the article was not incompatible with the Covenant, citing an example in which a supplier failed to provide medicines or food to a hospital for refugee children, which constituted a criminal offence.

40. Further to the request for additional information on the National School of the Judiciary and Court Officers, he said that the School was State-run and must be attended by anyone wishing to become a judge; admission was by competitive examination and students could specialize in judicial, administrative or financial matters. Both initial and continuing education were provided, the former involving theory-based learning and practical internships, and the latter focusing on specific topics according to the current capacity-building needs of the judiciary.

41. **Mr. Andriamihanta** (Madagascar), referring to the question of freedom of religion, said that a church wishing to establish itself in Madagascar was required to undergo a legal process in order to be recognized by the State. Regarding closure of churches, he said there had been a case in which one church had attempted to appropriate the property of another church, from which it had originally split. The Government had shut down the church in order to prevent disturbance of public order; the church had since instituted legal proceedings with the administrative court to reverse the decision. With reference to sects, a Brazilian church, which had not completed the legal process necessary for recognition by the State of Madagascar, had burned the Bible, thereby breaking the law by showing disrespect for the freedom of religion of members of the Catholic Church. Furthermore, because the Catholic Church had a particularly strong following in the area concerned, the act could have disturbed public order. The sect's activities had been banned and its leaders, all Brazilian, had been deported.

42. On the independence of judges, he said that Madagascar had a continental legal system, under which judges became civil servants following graduation from the National School of the Judiciary and Court Officers, rather than being elected or nominated; when they retired, they ceased to be part of the judiciary. Finally, the emoluments for judges were standard for Madagascar.

43. **Mr. Andrianarimanana** (Madagascar) said that, for geographical and economic reasons, Madagascar was not a destination for refugees, but rather a transit country. While in Madagascar, refugees were under the care of the United Nations, which was responsible for reviewing their files in accordance with the Geneva Conventions, and their rights were respected by the Government. He noted that no refugees had ever been repatriated from Madagascar, as a transit country.

44. He explained that paragraph 451 of the report referred to the fact that, in Madagascar, there were no ethnic minorities as defined by the Covenant. All members of the Malagasy population had the same culture and language, due to multicultural training. Therefore, ethnic communities did not really exist in Madagascar. Furthermore, foreigners could obtain Malagasy nationality, in which case they became full-fledged citizens; however, there were not enough such individuals to constitute a true community.

45. **Ms. Ralaivaoarisoa** (Madagascar), responding to the remarks about prisoners' lost files, acknowledged that there had been problems in the past with the file-keeping system at Antananarivo, but informed the Committee that the system had been computerized for the past five years, thereby preventing a recurrence. Furthermore, the Ministry of Justice had taken disciplinary measures with respect to the loss of a file by the registry of a court in Antananarivo, so as to ensure that more care would be taken in that regard in the future.

46. Referring to the inmate who had been waiting for 30 years for his appeal to be heard, she said that there had recently been a meeting of all the Supreme Court judges to review the situation of such inmates. Following investigation, the judges had concluded that the problem had been due in part to negligence by registries outside the capital. Those files were now all kept at the Supreme Court of Antananarivo and a taskforce had been created to deal with them within a month or two.

47. **Ms. Ratsiharovala** (Madagascar), referring to legal defence, said that all accused persons could engage a lawyer if they were willing to pay for one; in addition, legal aid was made available to accused persons with insufficient means who risked a sentence exceeding five years' imprisonment. At the preliminary investigation stage, accused persons could be assisted by any individual of their choice, with the exception of

a judge, a holder of elective public office or a member of the armed forces.

48. The Supreme Council of the Judiciary was chaired by the President of the Republic, who guaranteed the independence of the judiciary. Officially appointed members of the Council included representatives of the Ministry of Justice, all the chief justices of the Supreme Court and of the appeals courts, and judges elected by their peers. The Council was responsible for the assignment and promotion of members of the judiciary, whereas the assignment of public prosecutors was a matter for the Minister of Justice. The Council also acted as a disciplinary body, deciding the cases of judges brought before the Disciplinary Board. In principle, an investigation unit attached to the Ministry of Justice was responsible for carrying out enquiries before the case was referred to the Council. In addition, the Council could be asked for advice on the appointment of judges, especially chief justices; in that case, the Council proposed three names, and the Ministry chose one from among them. Finally, the Council appointed two members to the Constitutional High Court.

49. Reverting to the issue of lost files, she reiterated that the problem was rarely encountered in Antananarivo, and explained that, outside the capital, it was due mainly to a restructuring of the appeals court machinery. Initially, there had been just one appeals court, but several more had been established beginning in the 1990s and some prisoners' files had been transferred to the wrong court by mistake or, alternatively, had not been transferred when they should have been. Computerization of files had begun in Antananarivo, but was still lacking outside the capital. Regarding delays in processing appeals files, she explained that those files had to be dealt with by the Supreme Court in Antananarivo but that some files in jurisdictions outside the capital had never been received. Steps had been taken recently to eliminate the delays.

50. The anti-corruption law adopted in 2004 provided for the establishment of several bodies, including the High Council to Combat Corruption and the Independent Anti-corruption Office. Moreover, the anti-corruption network based in Antananarivo linked all judicial and administrative authorities handling corruption cases, including the police and the public prosecutor, as well as the courts, and as a result many corruption cases had been dealt with.

51. **Ms. Palm**, clarifying her earlier questions, asked whether there was a limit to the length of time judges could remain in office, or whether they were allowed to continue until retirement. Could they be removed from office and, if so, for what offences and according to what laws?

52. Referring to the question of lost files, she said that while the system had apparently improved, she was concerned about the situation outside Antananarivo, especially with regard to the computerization of files. If the system was unreliable, the current intolerable situation involving misplaced files was sure to continue.

53. While the Supreme Council of the Judiciary was a very important body, she was concerned about the great number of roles it had, as well as its composition, as it was bound to be significantly influenced by its ministerial members. The Council clearly decided some crucial issues involving judges, including their careers and even their appointment. Furthermore, she understood that hearings and decisions on disciplinary matters were secret and that, if found guilty, an individual could be transferred to another court or region; if true, that could have serious implications for the independence of judges. She asked the delegation to provide more information in that regard. She also wondered if judges could be dismissed by the Supreme Council of the Judiciary.

54. **Ms. Wedgwood** said that lost files called the legitimacy of detention into question, since there could be no case if there was no file. She also expressed concern about what appeared to constitute interference in freedom of worship and belief in Madagascar: lack of official recognition of a religion was not a ground for its prohibition.

55. **Mr. Bhagwati** said that he was disturbed about the composition of the Supreme Council of the Judiciary, which could adversely affect the independence of judges. Their fate should not be left in the hands of non-judges, and particularly not of politicians. The question of legal aid was also a cause of concern to the Committee. There should be a body to determine cases where the poverty of litigants justified the granting of such aid, for which funds should be available. Referring to the control exercised by the State party over private radio and television stations, he asked whether its power to close down such stations was a statutory or an executive power. It

would also be useful to know about the functions and composition of the National Labour Board mentioned in paragraph 342 of the periodic report.

56. **Ms. Ratsiharovala** (Madagascar) said that judges did not have a fixed term of office. They were removable, however, and in the course of their careers might serve successively in the judiciary and in the office of the public prosecutor, according to both requirements of the service and their personal convenience. They could be relieved of their duties for improper conduct, in particular corruption. As for the composition of the Supreme Council of the Judiciary, it did not include politicians but consisted of judges and officials from the Ministry of Justice, who were all magistrates entrusted with administrative functions. While it discussed disciplinary matters in non-public meetings, the results of its deliberations were made public, in particular through the press.

57. Turning to the question of detained persons whose files had been lost, she stressed that such persons were indeed released; however, efforts continued to be made to locate their files, sometimes successfully.

58. In response to the concern expressed about the availability of legal aid, she said that over the years such aid had rarely been used because of the strict requirements for determining poverty. The Government was currently seeking to make such aid more accessible by putting legal aid institutions in place; it had already established a number of legal information booths where people could obtain information and advice on legal matters free of charge.

59. **Mr. Andriamihanta** (Madagascar) said that there was full freedom of religion in Madagascar, subject only to respect for the law and tolerance of other religions. The Universal Church of the Kingdom of God had been closed because of its attacks against Catholicism.

60. **The Chairperson** commended the State party for the efforts it had made to improve its human rights legislation, as reflected in the delegation's responses; there still remained some issues which he hoped would be fully covered by additional written information. Community traditions, while perhaps not amounting to a parallel jurisdiction, could run counter to the guarantees enshrined in the Covenant, while the desire to modernize institutions could be frustrated by customs, which therefore needed to be monitored. There should also be possibilities of recourse. The Committee was particularly concerned about the treatment of twins in the country, because of the taboos attaching to them. The custom of abandoning one twin persisted and measures had to be taken to address that anomaly. The Committee would also appreciate fuller information about the various kinds of state of emergency that could be declared, their maximum duration and the legal safeguards that would be available in such a situation, bearing in mind that the provisions of the Covenant could not be suspended. Doubts likewise persisted about the situation of persons under detention. The Committee would like to know what protection was given to such persons when they were made available as forced labour to the private sector and whether the State monitored such practices. Other points to be borne in mind for future reports concerned the rights of minorities, both national and foreign, arbitrary interference with freedom of expression and conscience, and the practical results of reforms for the effective protection of citizens. He stressed that it was important for States parties not only to comply with the provisions of the Covenant but also to submit their periodic reports on time. Between the State party's second and third periodic reports 14 years had elapsed; that was excessive and did not facilitate the Committee's work.

61. **Ms. Ratsiharovala** (Madagascar) thanked the Committee for highlighting in its questions concerns that merited Madagascar's full attention in its efforts to promote and protect the human rights of its citizens and thereby to contribute to its development. Since indeed there could be no genuine development without an improvement in human well-being, respect for human rights was more important than the satisfaction of material needs and accounted, in particular, for the importance given to basic education in Madagascar, which was a prerequisite for the advancement of democracy. Democracy and development were interdependent and for that reason her Government was seeking to promote them hand in hand.

62. As had been apparent from some of the replies to the Committee's questions, further progress had been made in promoting human rights in the country since the writing of the report. Madagascar had acceded to the major international conventions and had strengthened its human rights legislation, notably for the protection of vulnerable persons, such as the disabled and those affected by HIV/AIDS. There had

also been improvements in prison conditions and the rights of detained persons, although the situation still gave cause for concern. The Committee's observations and suggestions would provide her country with valuable guidance and enable it to advance on the right track. In that spirit, her Government would be in favour of setting up permanent mechanisms for monitoring and evaluating democratic practices and the enjoyment of rights and freedoms. She assured the Committee that its observations would not remain a dead letter and that Madagascar's next report would be submitted in good time.

The meeting rose at 1 p.m.